



24 CFR Part 202

[Docket No. FR-6321-P-01]

Changes in Branch Office Registration Requirements

AGENCY: Office of the Assistant Secretary for Housing — Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Housing and Urban Development (HUD) is publishing this proposed rule to revise HUD's regulations for branch office registration requirements. To make mortgage industry standards more flexible and modernized, the proposed rule would remove the requirement that lenders and mortgagees register with HUD each branch office where they conduct Federal Housing Administration (FHA) business.

DATES: *Comment Due Date:* [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Members of the public may submit comments by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500. Due to security measures at all Federal agencies, however, submission of comments by standard mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by standard mail be submitted at least two weeks in advance of the deadline. HUD will make all comments received by mail available to the public at <https://www.regulations.gov>.

2. Electronic Submission of Comments. Interested persons may submit comments

electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. All submissions must refer to the docket number and title of the proposed rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD are available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Timothy Laramie, Mortgage Approval Analyst, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone number 202-402-6814 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more

about how to make an accessible telephone call, please visit

<https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

Prior to 1995, HUD required each mortgagee office to get approval from the HUD field office(s) located where the mortgagee intended to submit mortgages for insurance endorsement, with the exception of refinance cases.¹ After 1995, HUD expanded the geographic areas where mortgagees were allowed to originate FHA-insured mortgages. This combined HUD field offices that were geographically close together into a “lending area” and permitted mortgagees to conduct business with several field offices within that area. HUD required that mortgagees “maintain at least one approved branch office within a ‘lending area’ from which loans are submitted to the FHA Field Offices within the lending area.”²

In 2005, HUD announced three changes to the geographic areas where mortgagees originated loans.³ The first change expanded the geographic areas where a registered office can conduct FHA business to all HUD field office jurisdictions within groups of States. The second change reduced the number of branches required to conduct FHA business nationwide from 25 to 13 using the revised lending areas. The third change allowed mortgagees to have a single office approved to do nationwide “direct” lending via the Internet and/or a call center.

Currently, HUD follows its policy from HUD Handbook 4000.1 that was established in September of 2015. This policy calls a geographic area where a branch office is permitted to conduct FHA business an “Area Approved for Business” (AAFB).⁴ HUD Handbook 4000.1 states that all branch offices that are registered with HUD will initially be granted a nationwide

¹ See HUD, *Mortgagee Letter 95-36: Mortgagee Approval -- Single Family Loan Production -- Revised Mortgagee/Program Requirements*, Aug. 2, 1995, https://www.hud.gov/sites/documents/DOC_20554.TXT.

² See also HUD Handbook 4060.1 REV-1, *Mortgagee Approval Handbook I (4060.1) – Chapter 5 Part A. Branch Offices*, <https://www.hud.gov/sites/documents/40601C5HSGH.PDF>.

³ HUD, *Mortgagee Letter 05-40: Revisions to Single Family Origination Lending Areas and Nationwide Lending*, Oct. 20, 2005, https://www.hud.gov/sites/documents/DOC_20553.doc.

⁴ See HUD Handbook 4000.1 I.A.4b, *Single Family Lending Area (4000.1)*, <https://www.hud.gov/sites/dfiles/OCHCO/documents/4000.1hsgh-062022.pdf>.

AAFB to conduct FHA business; however, the registered branch “may only exercise its authority to originate or underwrite FHA mortgages in those states where the mortgagee fully complies with state origination and/or underwriting licensing and approval requirements.”

Under 24 CFR 202.5(k), approved FHA mortgagees and lenders can, upon approval by the Secretary, maintain branch offices to originate Title I or Title II loans⁵ or submit applications for mortgage insurance; however, the branch office must be registered with HUD. Under 24 CFR 202.5(m), to retain FHA approval, a mortgagee or lender must complete FHA’s recertification process annually. The recertification process requires submission of financial data that includes details about total FHA activity conducted during the fiscal year, as well as a certification that each lender and mortgagee has not been refused a license and has not been sanctioned by any state or states in which it will originate insured mortgages or Title I loans.

II. PROPOSED RULE

In this proposed rule, HUD seeks to update its regulations by eliminating the requirement that a lender or mortgagee must register with HUD all branch offices where it conducts FHA business. This proposed rule would revise 24 CFR 202.5(k) to instead give mortgagees and lenders the option to register and maintain branch offices with HUD, which would allow them to be placed on HUD’s Lender List Search page.⁶ In addition, the proposed rule would revise 24 CFR 202.5(i) to make fees applicable to each branch office that a mortgagee or lender registers with HUD rather than applying fees to each branch office where they are authorized to conduct FHA business. This proposed change is based on the mortgage industry’s evolution over time and the advancement of technology. Today, there is no longer a need to maintain several branch offices to conduct FHA business nationwide. While the mortgage industry has evolved, the regulations for branch office registration requirements have remained the same.

⁵ Title I and Title II loans are mortgages or fixed-rate loans issued by the Federal Housing Administration (FHA) for home improvements and buying property.

⁶ See https://www.hud.gov/program_offices/housing/sfh/lender/lenderlist.

Prior to the COVID-19 pandemic, the mortgage industry experienced an upward trend in the use of remote service delivery and use of technology to complete loan applications.⁷ During the COVID-19 pandemic, remote service delivery and the use of technology became the norm and furthered the shift away from in-person, face-to-face interactions. As the mortgage industry has evolved, HUD has found it necessary to update its regulations to become more modernized and less antiquated, which would increase homeownership opportunities in underserved urban and rural areas.

Additionally, mortgagees, lenders, banks, and credit unions have expressed dissatisfaction with the requirement to register branch offices and have asked HUD what can be done to make the FHA process more flexible. The industry views the branch office requirement as burdensome and a hinderance to entities wanting to participate in FHA programs. HUD agrees that the requirement to register branch offices has become cumbersome and no longer aligns with the way the industry operates. Additionally, the requirement is somewhat redundant as branch offices will still need to be licensed by the state according to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act)⁸. The SAFE Act instructs states to adopt loan originator licensing and registration requirements that meet the minimum standards determined by the SAFE Act.⁹ This proposed rule would provide less of an administrative burden for existing mortgagees and lenders and eliminate barriers for entities interested in FHA programs. In addition to providing relief for the mortgage industry, it may also encourage more mortgagees and lenders to originate FHA-insured mortgages.

Removing the requirement to register branch offices would not affect HUD's monitoring of mortgagees and lenders. HUD would continue to maintain oversight and risk management of mortgagees and lenders who would remain responsible to FHA for the actions of its branch

⁷ See e.g. Fiserv, Inc., *Expectations & Experiences: Borrowing and Wealth Management* (2019) (One consumer trend survey found that 65 percent of recent mortgage applicants reported using computers or mobile devices to complete at least a portion of the application). <https://www.fiserv.com/en/about-fiserv/resource-center/consumer-research/expectations-experiences-borrowing-and-wealth-management-fall-2019.html>.

⁸ HOUSING AND ECONOMIC RECOVERY ACT OF 2008, Pub. L. 110–289, July 30, 2008, 122 Stat 2654.

⁹ 12 U.S.C. 5701- 5710 and 24 CFR part 3400.

offices and employees. As always, branch office employees would need to work through a mortgagee or lender to conduct FHA business. When an FHA loan is originated, enough information is collected to monitor the performance of mortgagees and lenders such as the underwriters, originators, and location of the loan. HUD can monitor mortgagees and lenders even without the specific branch office identification. Additionally, HUD would continue to monitor the origination and underwriting authority for each mortgagee and lender under 81 Areas Approved for Business that correspond to HUD field office jurisdictions.¹⁰ Furthermore, HUD's Office of Lender Activities and Program Compliance - Quality Assurance Division (QAD) would continue to monitor FHA lenders quarterly to determine if Credit Watch Termination is warranted against a lender.¹¹

HUD does not foresee any negative impacts to risk management and oversight caused by this proposed rule change. The regulation would be updated to evolve along with the mortgage industry and reflect its business practices, mortgagees and lenders would be given more flexibility when conducting FHA business, and HUD would be able to address concerns expressed by banks, credit unions and banking industry trade associations. Moreover, the proposed changes would remove an operational and regulatory burden, which could result in more banks and credit unions participating in FHA programs. Ultimately, this would benefit homebuyers, who would have increased access to FHA-insured mortgage products as the number of banks and credit unions participating in FHA programs increased.

III. FINDINGS AND CERTIFICATIONS

Regulatory Review – Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office

¹⁰ See 24 CFR 202.3(c)(2)(i) stating that HUD “will review, on an ongoing basis, the number of defaults and claims on mortgages originated, underwritten, or both, by each mortgagee in the geographic area served by a HUD field office.”

¹¹ FHA may terminate a lender's authority to underwrite FHA-insured loans in any HUD field office jurisdiction where the lender has an excessive rate of early defaults and claims. See 24 CFR 202.3(c)(2).

of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

This proposed rule was determined to be a “significant regulatory action” as defined in Section 3(f) of the order (although not an economically significant regulatory action under the order). The proposed rule would revise 24 CFR 202.5(i) and (k) to update HUD’s regulation to conform with the mortgage industry’s evolving business practices. Additionally, the proposed rule would lessen the administrative burden on mortgagees and lenders.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

Environmental Review

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would remove the requirement that lenders and mortgagees register with HUD each branch office where they conduct FHA business. This would not create an undue burden on small entities, instead it would eliminate the burden for all mortgagees and lenders of having to register branch offices with HUD and pay the associated fees. HUD has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments or is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this proposed rule have been approved by OMB under the Paperwork Reduction Act and assigned OMB control number 2502-0059.

List of Subjects in 24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble above, HUD proposes to amend 24 CFR part 202 as follows:

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

1. The authority citation for part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709 and 1715b; 42 U.S.C. 3535(d).

§ 202.5 [Amended]

2. In § 202.5:

- a. In paragraph (i), remove the words “authorized to originate Title I loans or submit applications for mortgage insurance” and add in their place the words “that the lender or mortgagee registers with the Department”;

- b. In paragraph (k), add the words “or mortgagee” after “A lender” in the first sentence, and remove the second sentence.

Julia R. Gordon,

Assistant Secretary of Office of Housing – Federal Housing Administration.

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